

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)	MB Docket No. 14-82
)	
PATRICK SULLIVAN)	FRN 0003749041, 0006119796,
(Assignor))	0006149843, 0017196064
)	
and)	Facility ID No. 146162
)	
LAKE BROADCASTING, INC.)	File No. BALFT-20120523ABY
(Assignee))	
)	
Application for Consent to Assignment of)	
License of FM Translator Station W238CE,)	
Montgomery, Alabama)	

To: Marlene H. Dortch, Secretary
Attn: Chief Administrative Law Judge Richard L. Sippel

**ENFORCEMENT BUREAU'S REPLY PROPOSED
FINDINGS OF FACT AND CONCLUSIONS OF LAW**

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The Chief, Enforcement Bureau (Bureau), through her attorneys, respectfully submits these Reply Proposed Findings of Fact and Conclusions of Law in response to the Findings of Fact and Conclusions of Law submitted by Patrick Sullivan and Lake Broadcasting, Inc. (Lake).¹

INTRODUCTION AND SUMMARY

1. Lake has pointed to no evidence that establishes by a preponderance of the evidence, that (i) Michael S. Rice (Rice) – Lake’s president, director and sole shareholder – has been rehabilitated to an extent that promotes confidence that he will refrain from child sex abuse, or that there exist the “extraordinary and compelling circumstances” to overcome the public interest concerns associated with Rice’s child sex abuse crimes; and/or (ii) Rice (and therefore, Lake) can be relied upon to be truthful, candid, and forthcoming in his dealings with the Commission, and to comply in all other respects with the Commission’s rules, regulations, and policies.

2. Lake’s Proposed Findings rely heavily on information concerning the construction, ownership and operation of Rice’s broadcast stations as well as his standing in the community and his private ownership interests (based entirely on letters of reference that should be deemed inadmissible hearsay and should not be entered into evidence). None of this information is relevant to whether Rice has been rehabilitated and is at risk to engage in sexual crimes against children or whether he can be relied upon to be truthful, candid, and forthcoming in his dealings with the Commission. Lake’s Proposed Findings also rely on the reports of expert witnesses who not only lack expertise in assessing sex offender rehabilitation and the risk of reoffense, but contradict one another on whether Rice suffers from pedophilia – a disease

¹ See Patrick Sullivan and Lake Broadcasting, Inc.’s Findings of Fact and Conclusions of law, filed May 10, 2018 (Lake’s Proposed Findings). See also Enforcement Bureau’s Proposed Findings of Fact and Conclusions of Law, filed May 10, 2018 (Bureau’s Proposed Findings).

central to the questions posed in this matter. Indeed, one of these experts, Dr. Stillings, who, at the time of the hearing was deceased and could not testify or be cross-examined – and whose reports should similarly be deemed inadmissible hearsay – based his conclusions on incorrect and outdated information. Rice’s only testifying expert witness, Dr. Duncan-Hively, is not a state approved sex offender therapist who is qualified to render a meaningful evaluation in this matter. Moreover, her reports are replete with errors and misjudgments that render her opinion unreliable.

3. The evidentiary record also refutes Lake’s attacks on the Bureau’s expert witnesses. The Bureau presented unrefuted evidence from local Missouri law enforcement demonstrating that Rice is at an elevated risk to reoffend and poses a threat to his local community. Ms. Tamara Gremminger, a Probation and Parole Officer and Sex Offender Specialist with the Missouri Department of Corrections, who regularly performs sex offender risk assessments as part of her employment and testifies regularly for the state of Missouri, concluded that Rice poses a “substantial risk” to reoffend. Additionally, the Bureau’s expert psychologist, Dr. Weitzl, who works closely with local law enforcement and the office of the Attorney General in Missouri, independently reached the same conclusion. Most importantly, each has determined that the grant of a new Commission broadcast license to Rice will have the effect of enabling his possible future crimes against children.

REPLY PROPOSED FINDINGS OF FACT

I. Lake Did Not Establish That Rice Has Been Rehabilitated From The Sex Crimes Against Children For Which He Was Convicted

A. Information About Rice's Community Involvement and Business Interests Does Not Demonstrate That He Has Been Rehabilitated

4. In its Proposed Findings, Lake appears to suggest that Rice's early education, broadcast experience, broadcast station and communications tower ownership, awards, property management and condominium association involvement, residential property interests, church membership, and professional organization memberships should be considered as evidence of Rice's rehabilitation. (*See Lake's Proposed Findings* ¶¶ 7-10, 15-17.) However, even accepting for the moment that all of these statements are true, they provide no basis for finding that Rice has been rehabilitated from the sex crimes against children for which he was convicted.

5. The record shows, for example, that at the time Rice was grooming neighborhood children for sex, plying them with alcohol and marijuana, and molesting them, he owned a house, an expensive car (a red corvette), held five Commission licenses, and owned multiple broadcast stations. (*See Bureau's Proposed Findings* ¶ 10.) The record further demonstrates that Rice's status in the community and position as a broadcaster actually enhanced his ability to offend. Rice testified that he talked to his victims about his radio station ownership and about his career in broadcasting, which he believed they admired. (*See Hearing Tr. (Rice)* at 255:13-17.). In addition, Rice used his stereo equipment, CDs, videos and the knowledge and experience he gained from working in broadcast to entice and manipulate his victims. (*See EB Direct Case Exh. 4* at 20-21, 29.) As the Presiding Judge so aptly characterized the evidence at the hearing, the image of a prosperous radio broadcaster makes Rice appear a "superman" in the

eyes of admiring children and positions him to take advantage of them. (*See* Hearing Tr. 645:17-18.)

6. This is a description with which the Bureau's experts readily agreed. Indeed, the Bureau's expert psychologist, Dr. Weitzl, testified that she was concerned that Rice generally used his status as a broadcaster to groom children. (*See* Hearing Tr. (Weitzl) at 646:15-23.) Dr. Weitzl specified that through station ownership, Rice attained the kind of attractiveness and allure to children that produced Rice's opportunities to victimize them. (*See* Hearing Tr. (Weitzl) at 644:17-645:6.) Likewise, the Bureau's other expert, Ms. Gremminger, a Sex Offender Specialist in the Probation and Parole Department of the Missouri Department of Corrections, maintained that it was Rice's radio station ownership and the "prestige myth" that accompanied it, which made Rice attractive to young boys, regardless of the kind of license he holds. (*See* Hearing Tr. (Gremminger) at 517:3-17, 517:22-518:7.) Given that the broadcast license for which Lake (and/or Rice) has now applied appears to have been an integral part of the businessman/broadcaster image Rice used in "grooming" children for sexual molestation, restoring such a license raises significant concern with local law enforcement officials. (*See* EB Direct Case Exh. 1, Written Direct Testimony of D. Kimberly Weitzl (Weitzl Direct) ¶ 3; *see* Hearing Tr. (Weitzl) at 644:17-645:6); Hearing Tr. (Gremminger) at 517:3-17, 517:22-518:7.)

7. Moreover, little weight should be given to Lake's assertion that "since [Rice's] release from prison in 1999 – 18 years ago – there have been no events that tarnish his reputation in the community." (Lake's Proposed Findings ¶ 36.) This fact, even if true, is not dispositive on the question of rehabilitation or of whether Rice will reoffend. Despite his apparent untarnished reputation prior to his felony convictions, Rice was later discovered to have sexually victimized multiple children over an extended period of years. (*See* Hearing Tr. (Rice) at

292:24-293:20; EB Direct Case Exh. 4 at 12, 20, 25.) An August 27, 1996 police investigation report described Rice as the “Pied Piper of children” who “molested during the last several decades many more children than we will ever know.” (EB Direct Case Exh. 4 at 21.) Due to the nature of the crimes he committed, any evidence of Rice’s professional interests, various accolades, and alleged standing in the community are not reliable factors for determining whether he has been rehabilitated from his sex crimes against children and/or whether he will reoffend.

B. The Six Letters of Reference Relied on By Rice Adduce No Evidence of Rehabilitation

8. The six letters of reference offered by Lake in support of Rice’s character (*see* Lake’s Proposed Findings ¶ 18) were apparently generated by “acquaintances and business associates of Mr. Rice” who do not live within Rice’s community and who do not appear to have any intimate knowledge of Rice’s sexual orientation or patterns of offensive behavior against children. (Lake Direct Case Exh. 1, App. C.) In addition, as the Bureau’s expert psychologist Dr. Weitz testified, reference letters from acquaintances and business associates are not helpful in assessing a sex offender’s character because “unless they have seen [someone] molest a child,” they will not be able to relay pertinent information about the risk the offender poses. (Hearing Tr. (Weitz) at 673:22-674:8.) Indeed, Rice successfully kept his sexual abuse of children hidden from his acquaintances, business associates, and his community for decades. (*See* EB Direct Case Exh. 4 at 4, 20.)

C. Rice’s Age And Physical Ailments Are Immaterial To Whether Rice Has Been Rehabilitated Or Will Reoffend

9. As further purported evidence of rehabilitation, Lake states that Rice is 76 years old, suffers from diabetes and hypertension for which he takes medicine, suffered a heart attack eight years ago, had surgery for a hemorrhaged eye, and remains on one psychotropic

medication. (See Lake's Proposed Findings ¶ 19.) Nevertheless, the evidentiary record establishes that factors such as age, physical ailments, and other conditions that may negatively impact the ability to function sexually are not dispositive on the question of whether Rice has been rehabilitated or will reoffend. (See Hearing Tr. (Weitl) at 605:11-24; Weitl Direct ¶ 65).

10. At the hearing, the Bureau's expert, Dr. Weitl, explained that even where a sexual predator may experience a negative impact on his "libido," from either medication or other factors, there remains a risk of continued sexual victimization. (See Hearing Tr. (Weitl) at 605:11-24.) Dr. Weitl further explained:

Our brains are what tell us what we're sexually attracted to. Our brains are the ones that fantasize and our brains drive these urges. Whether or not we're able to get an erection, isn't necessarily a pattern, it might be a part of our cycle, might not be how we re-offend.

(Hearing Tr. (Weitl) at 605:16-22.) According to Dr. Weitl, in "Rice's case, he was performing oral sex on the boys. He wouldn't need an erection to do that." (Hearing Tr. (Weitl) at 605:23-24; see also Weitl Direct ¶ 65 (recognizing that because Rice "was over 50 years old when he was arrested . . . his age had not previously deterred him from engaging in sexual activity with minors. Men who sexually abuse children, especially male children, can continue molesting victims into their advanced years, even after experiencing a decrease in the frequency and intensity of their physical arousal.") The Bureau's other expert witness, Ms. Gremminger, separately reached the same conclusion with respect to the question of reoffending, stating that "you have to look at all the programs they've been through, the responsibility they've taken, the tests, and the therapy. So it's not just . . . their age. You have to look at . . . the whole picture to bring the puzzle together." (See Hearing Tr. (Gremminger) at 487:8-17; 502:25-503:6.)

II. Lake Did Not Offer Medical Evidence Showing Rice Has Been Rehabilitated

A. Lake Relies on Outdated and Incorrect Statements From A Deceased Psychiatrist Who Did Not Appear at the Hearing and Could Not Be Cross-Examined

11. In its Proposed Findings, Lake relies on two statements from Rice's deceased psychiatrist, Dr. Wayne A. Stillings, one prepared in 2001 and the other in 2011, to demonstrate that Rice has been "successfully treated" and has shown "genuine remorse for his wrongdoing." (Lake's Proposed Findings ¶ 11; *see also* EB Official Notice Exh. 1 at 13-22.) Dr. Stillings, who died in 2015, last treated Rice in 2010 or 2011 (Hearing Tr. (Rice) at 299:15). Neither his 2001 nor his 2011 evaluations reflect Rice's current condition.

12. In his 2001 statement, for example, Dr. Stillings acknowledged that the success of Rice's treatment and reduced risk of reoffending were conditional on Rice's continued mental health therapy and use of medication. He stated: "There is absolutely no reason to anticipate that any of [Rice's] disorders [causing his criminal offenses] will again become active so long as [he] continues to take his prescribed medications and to pursue the appropriate therapy." (EB Official Notice Exh. 1 at 20, ¶ 9.) However, at the hearing, Rice testified that he has not engaged in any psychiatric monitoring in the years since Dr. Stillings died. (*See* Hearing Tr. (Rice) at 299:9-18.)

13. Similarly, although Dr. Stillings noted that Rice suffered from an alcohol abuse disorder – the same disorder on which Rice has blamed his illicit sexual encounters with children (*see, e.g.,* Lake Direct Case Exhibit 1 (Rice Direct) at 2; Hearing Tr. (Rice) at 209:6-9; 210:11-13) – Dr. Stillings concluded that this disorder should not be a factor in considering Rice's rehabilitation and likeliness to reoffend because, at the time of Dr. Stilling's examination, Rice was not able to drink because of his medication. (*See* EB Official Notice Exh. 1 at 18). At the

hearing, however, Rice testified that he currently drinks (*see*, e.g., Hearing Tr. (Rice) at 209:10-23) and admitted that he is not being treated for alcohol abuse or attending anything like Alcoholics Anonymous. (*See* Hearing Tr. (Rice) at 299:22-24; 300:12-15.) Given these critical changes in Rice's condition since he last saw Dr. Stillings, the 2001 and 2011 evaluations are simply too old and outdated to reflect Rice's current likelihood to reoffend.

14. In addition, the record shows that Dr. Stillings treated Rice for "mental illness" that was unrelated to pedophilia. (*See* Lake Direct Case Exh. 3, Appendices B and C; Hearing Tr. (Duncan-Hively) at 383:14-384:2; Weitz Direct ¶ 78.) It was Dr. Stillings' understanding that "[e]ach of the individuals with which [Rice] was alleged to have had sexual contact in the Missouri criminal action was a post-pubescent adolescent." (EB Official Notice Exh. 1 at 20, ¶ 8.) Based on this erroneous assumption that none of Rice's victims were 13 years old or younger, Dr. Stillings concluded that Rice is "not a pedophile." (*Id.*) However, Dr. Stillings failed to consider critical information contained in the Missouri Department of Parole and Probation's records about the ages of Rice's victims and the circumstances of his crimes. (*See* EB Direct Case Exh. 4 at 12-13, 29.) Specifically, these records reflect that at least some of Rice's victims were less than 14 years old. (*See* EB Direct Case Exh. 10 at 2-6.) In fact, Lake's own expert psychologist, Dr. Duncan-Hively, disagreed with Dr. Stillings' conclusion that Rice was "not a pedophile." Rather, Dr. Duncan-Hively admitted at the hearing that, when she prepared her report regarding Rice in 1991, Rice would have qualified as a pedophile and that "he would fit under the general category of child molester." (Hearing Tr. (Duncan-Hively) at 397:14-23 and 419:13-19.)

15. Dr. Stillings also blamed Rice's aberrant behavior in part on a diagnosis of "multiple personality disorder," involving a second "adolescent personality [called] 'Mike Jr.'"

(EB Official Notice Exh. 1 at 17-18.) At the hearing, Dr. Duncan-Hively also disagreed with Dr. Stillings' multiple personality disorder diagnosis. (*See* Hearing Tr. (Duncan-Hively) at 410:17–411:21.) In this regard, Lake's expert agreed with the Bureau's expert psychologist, Dr. Weitzl, who concluded that it was erroneous for Dr. Stillings to blame Rice's sexually deviant behavior on "mental disorders [that] do not affect an individual's sexual interest, nor explain forcing sex on anyone – much less a child." (Weitzl Direct ¶¶ 73, 74.)

16. Moreover, Dr. Stillings' statements do not support the propositions for which Lake has proffered them. Contrary to the representation made in Lake's Proposed Findings, neither of Dr. Stillings' statements mentions that Rice showed remorse for his behavior – a critical element in demonstrating rehabilitation. (*See* Lake's Proposed Findings ¶ 11.) Indeed, the word "remorse" never appears in either statement. (Cf. EB Official Notice Exh. 1 at 13-22.) As the Bureau's expert, Dr. Weitzl, observed, "nowhere does [Rice] acknowledge the pain and suffering experienced by the victims and their families, suffering that was a direct result of Mr. Rice affirmatively satisfying his sexual needs." (*See* Weitzl Direct ¶ 77.) Indeed, as detailed fully in the Bureau's Proposed Findings, the record is devoid of any evidence of remorse shown by Rice. (*See* Bureau's Proposed Findings ¶¶ 25-34.) Despite ample opportunity to do so, Rice has consistently failed to show remorse for his victims, including through his testimony at the hearing.

B. Rice's Participation In MoSOP During Incarceration Does Not Demonstrate Rehabilitation

17. Lake asserts that Rice's participation in the Missouri Sex Offender Treatment Program (MoSOP) while he was incarcerated demonstrates that he has been rehabilitated. (*See*

Lake's Proposed Findings ¶ 11.) Lake did not produce any records relating to Rice's participation in the MoSOP program other than a bare-bones certificate indicating that he participated. (*See* Lake Direct Case Exhibit 1, App. A).

18. The record shows that after his participation in the program, Rice's treatment providers considered him to be at an elevated risk to reoffend. (*See* EB Direct Case Exh. 4 at 8-10.) His MoSOP Clinical Supervisor, a licensed clinical social worker, wrote that Rice did not appear to have internalized the treatment concepts, doing just enough to meet the program's requirements. (*See* EB Direct Case Exh. 4 at 8; *see also* Hearing Tr. (Weitl) 664:19-665:3.) At the conclusion of Rice's participation in MoSOP, the treatment provider opined that, regardless of Rice's completion of the Program, he remains at a "moderately high risk to reoffend sexually." (EB Direct Case Exh. 4 at 10; *see also* Hearing Tr. (Weitl) at 665:5-11; 666:5-8.) This report further cautioned that in order to mitigate Rice's risk to reoffend, he should be subject to "close supervision by his parole officer and continued therapy." (EB Direct Case Exh. 4 at 10.) These MoSOP records undermine Rice's claim that he is rehabilitated.

19. Lake did not submit any of this additional information contained in Rice's MoSOP file. And, not surprisingly, these additional MoSOP records are part of the same Bureau exhibits that Lake characterizes as "scurrilous statements" (Lake's Proposed Findings ¶ 45) and which Lake again seeks to block from the evidentiary record. (*See* Lake's Proposed Findings ¶¶ 48-50.)

C. Rice's Treatment Post-Incarceration Is Insufficient To Show Rehabilitation

20. In its Proposed Findings, Lake asserts that after Rice's release, he participated in group therapy during his parole. (*See* Lake's Proposed Findings ¶ 14.) As detailed in the Bureau's Proposed Findings, the doctor from whom Rice apparently received this therapy, Dr.

Robinson, was not qualified to provide the treatment offered. (*See* Bureau's Proposed Findings ¶¶ 51-52, 78; *see also* EB Direct Case Exh. 12 at 20; EB Direct Case Exh. 2, Written Direct Testimony of Tamara Gremminger (Gremminger Direct) ¶ 11.) Regardless of whether Rice was unaware of the provider's lack of qualifications, his participation in an unapproved program does not establish rehabilitation.

21. In fact, Dr. Weitzl concluded that Rice's sex offender treatment was "insufficient and ineffective." (Bureau's Proposed Findings ¶¶ 76-79.) During her clinical interview of Rice, for example, Dr. Weitzl observed that he was unable to explain the basic components of his treatment, such as the type of sexual offenses for which he was incarcerated or his relapse prevention plan. (*See* Weitzl Direct ¶¶ 28-30, 60.) In addition, Dr. Weitzl concluded that Rice failed to gain any apparent insight during his sex offender treatment (*see* Hearing Tr. (Weitzl) at 604:17-21), e.g., into how the depression he claims to suffer from – and on which he blames his sexual offenses – was associated with his sexually deviant behavior. (*See* Weitzl Direct ¶ 29.)

22. The record is devoid of evidence that Rice received any sex offender treatment after his parole.

D. Lake's Expert Witness Is Not An Expert In The Evaluation Of Sex Offenders and Her Opinion is Riddled With Deficiencies

23. Lake relies on the opinion of clinical psychologist, Dr. Duncan-Hively, as evidence of Rice's rehabilitation. (*See* Lake's Proposed Findings ¶¶ 20-25, 36.) Yet, Dr. Duncan-Hively lacks the qualifications to render a reliable opinion regarding a sex offender's rehabilitation or risk of reoffense. (*See* Hearing Tr. (Duncan-Hively) at 397:4-13.) Nowhere in her resume is there any indication that she received specific training or certification for the performance of such an assessment. (*See* Lake Direct Case Exh. 3, App. A.) Indeed, at the hearing, Dr. Duncan-Hively readily admitted that she is not an expert in the evaluation of sex

offenders. (*See* Hearing Tr. (Duncan-Hively) at 366:14-15, 393:17-394:33, 396:17-20, 397:4-13.) As the record further reflects, Dr. Duncan-Hively “is not an approved sex offender therapist in the state of Missouri” and “treatment of sexual offenders comprises only a small portion of Dr. Duncan-Hively’s practice and that the evaluation of sex offenders is not her specialty.” (Weitl Direct ¶ 67.)

24. In addition, as detailed in the Bureau’s Proposed Findings, in rendering her opinion, Dr. Duncan-Hively ignored key evidence concerning Rice’s psychological condition, trivialized the seriousness of Rice’s criminal behavior, attributed his criminal acts to a plethora of psychological conditions unrelated to his sexual orientation, and falsely reported the findings of the Minnesota Multiphasic Personality Inventory (MMPI 2) test to bolster her conclusions about Rice. (*See* Bureau’s Proposed Findings ¶¶ 37-43; *see also* Hearing Tr. (Weitl) at 668:22-671:3.) She further undercut her own findings by stating at the hearing that Rice suffered from pedophilia at the time of his crimes and would have “fit under the general category of child molester.” (Bureau’s Proposed Findings ¶ 40.) Breaking with accepted medical authority, she also pronounced that Rice was cured of pedophilia simply because of his age. This is at odds with the medically accepted definition of “Pedophilia” set forth in the Diagnostic Statistical Manual (5th ed.) (DSM) which defines “Pedophilia” as a lifelong condition. (*See* Bureau’s Proposed Findings ¶ 40.)

25. Furthermore, the Bureau’s expert, Dr. Weitl, testified that Dr. Duncan-Hively’s reports are “problematic” for numerous other reasons, including that (i) they “place excessive weight on psychological tests” which are used “only for the purpose of treating and not evaluating the offender;” (ii) they fail to “acknowledge even the possibility that Mr. Rice suffers from a sexual disorder” notwithstanding her diagnosis at the hearing that Rice suffered from

pedophilic disease in 1991; (iii) they “misrepresent” the MoSoP treatment that Rice received as “two years of difficult and demanding group therapy” when the program was in fact only nine months long and “according to the records Mr. Rice experienced difficulties there;” and (iv) they place too much reliance on self-reporting by Rice “who clearly has the motive to present himself as ‘cured.’” (Weitl Direct ¶¶ 68, 71.) Dr. Weitl further found Dr. Duncan-Hively’s 1991 report “extremely troubling” in that it attempts to “divert guilt away from her client” by blaming the victims, calling them “skillful, manipulative teenagers,” who victimized Rice. (Weitl Direct ¶ 69.)

26. There are additional deficiencies in Dr. Duncan-Hively’s assessment, including her failure to consider other empirically-based risk factors which both of the Bureau’s experts took into account in making their assessments of Rice’s risk to reoffend. (*See* Weitl Direct ¶¶ 51-63; Gremminger Direct ¶¶ 15-16.) These factors include Rice’s lack of full-time employment, his lack of a family structure, his apparent failure to take full responsibility for his actions (instead asserting that they are solely the result of a mental condition and binge drinking), the fact that the victims were all male children, the fact that he groomed these minors for a long period of time and plied them with alcohol, his continued drinking, an inability to maintain a romantic relationship with an appropriately aged partner, a history of being unable to obtain and maintain friendships, failure to recognize that he caused his victims harm or that sexual abuse of children is wrong, intoxication during the offense, and his personality disorders. (*See id.*) In the Bureau’s experts’ opinions, the presence of these numerous factors raises the risk assessment level from low/moderate to high. (*See id.*)

27. Significantly, neither Dr. Duncan-Hively’s 1991 or 2014 reports include the diagnosis she gave at the hearing – i.e., that Rice suffered from pedophilia. (*See* Lake Direct

Case Exh. 3, App. B, C.; Hearing Tr. (Duncan-Hively) at 419:13-19.) Dr. Weitz found the absence of such a finding particularly problematic. (See Weitz Direct ¶ 68.)

28. In addition, Lake tries to make much of the fact that Dr. Duncan-Hively evaluated Rice in 1991 and then again 23 years later in 2014. (See Lake's Proposed Findings ¶ 24.) Lake fails to explain how this lends any greater credence to her opinion. In both instances she was simply a paid consultant who never treated Rice. As she explained at the hearing, it would have been "unethical" for her to both treat and evaluate Rice. (See Hearing Tr. (Duncan-Hively) at 4:20:15-24.)

III. Lake Did Not Adduce Sufficient Evidence to Attack the Credibility of The Bureau's Expert Witnesses

A. Lake's Criticisms of Dr. Weitz's Expert Opinion Are Baseless

29. In an effort to discredit the Bureau's expert, Dr. Weitz, Lake relies on Dr. Duncan-Hively's criticisms of Dr. Weitz's evaluation of Rice – namely, that she met with Rice for 1½ hours; did not perform "objective psychological testing" on Rice; and did not gather sufficient evidence from contemporary collateral sources. (See Lake's Proposed Findings ¶¶ 26, 47). Yet, Dr. Duncan-Hively lacks the qualifications to render a reliable opinion on Dr. Weitz's expert evaluation of Rice. Dr. Duncan-Hively is not an approved sex offender therapist in the state of Missouri (Weitz Direct ¶ 67) and she admitted that this is not her area of expertise. (Hearing Tr. (Duncan-Hively) at 366:14-15; 393:17-394:3; 396:17-20; 397:4-13.) Indeed, Dr. Duncan-Hively admitted that the Bureau's expert, Dr. Weitz, "is eminently more qualified" than she is in the evaluation of sex offenders. (Hearing Tr. (Duncan-Hively) at 397:4-13.) The record shows that, unlike Dr. Duncan-Hively, Dr. Weitz does this type of risk assessment for local law enforcement hundreds of times each year. (See Hearing Tr. (Weitz) at 624:2-10.)

30. Likewise, there is no merit to Lake's assertion that the Duncan-Hively reports are qualitatively better than Dr. Weitzl's because, compared to the 1½ hour clinical interview Dr. Weitzl conducted, Rice met with the Dr. Duncan-Hively and her husband, Dr. Wells Hively, for a total of 9 hours of evaluation and testing (*see* Hearing Tr. (Duncan-Hively) at 418:11-16). Dr. Weitzl offered testimony that a 1½ hour clinical interview is standard for a sex offender evaluation. (*See* Hearing Tr. (Weitzl) at 580:25-581:12.) Moreover, almost all of the difference in the amount of time spent by Drs. Hively and Dr. Weitzl in evaluating Rice is attributable to the fact that the Hivelys subjected Rice to testing which Dr. Weitzl did not then have to duplicate. (Weitzl Direct ¶ 3). Dr. Weitzl simply reviewed the results of the tests the Hivelys had already administered. (*See id.*) More importantly, Dr. Weitzl testified that she "did not make any attempt to duplicate" some of the testing the Hivelys conducted on Rice because such testing is not used for evaluating sex offenders and "would not provide information related to Mr. Rice's risk to sexually reoffend or assist with rendering his diagnosis." (Weitzl Direct ¶ 70.)

31. Moreover, Dr. Duncan-Hively is simply wrong that a lack of duplicative "psychological testing" of Rice renders Dr. Weitzl's report deficient. In fact, Dr. Duncan-Hively's criticism is reflective of her lack of expertise in this area. (*See* Lake's Proposed Findings ¶ 26.) As Dr. Weitzl explained:

The standard practice for conducting sex offender evaluations does not include the use of any psychological tests commonly used in typical psychological evaluations because research has not found those tests (typically based on self-report information) helpful in estimating an offender's risk to reoffend, nor diagnosing a sexual disorder. Testing that is based on the offender's own reports are typically not helpful because the offender is motivated to present himself in an overly favorable light and to deny the presence of any deviant sexual fantasies, urges or behaviors.

(Weitzl Direct ¶ 46.)

32. Dr. Duncan-Hively also faults Dr. Weitzl for not speaking with collateral sources. (Lake Direct Case Exh. 3 at 1.) She fails to cite to any authority in support of this proposition or to establish that this constitutes a standard practice for such evaluations. According to Dr. Weitzl, information from collateral sources such as acquaintances and business associates is not helpful in the evaluation of a sex offender because they generally do not possess the pertinent information about the risk the offender poses. (*See* Hearing Tr. (Weitzl) at 673:22-674:8.) Notably, although Dr. Duncan-Hively testified that she spoke with collateral sources, Missy Cruz and Tom Loudon, probation officers who supervised Rice during parole (*see* Hearing Tr. (Duncan-Hively) at 416:16-24, 417:7-19), she did not identify these individuals in her report nor did she state that she relied on anything they said. (*See* Lake Exh. 3 App. C.) Remarkably, Lake also criticizes Dr. Weitzl's opinion on the grounds that it is based on her personal bias against sex offenders. (*See* Lake's Proposed Findings ¶ 26.) Lake offers nothing in the record to support this allegation. Instead, Lake relies solely on an unsubstantiated and conclusory statement from Dr. Duncan-Hively's expert report. (*See id.* and Lake Direct Case Exhibit 3 at 2.) Furthermore, Dr. Weitzl's credentials show that she has not only testified on behalf of the state. She has "also testified on behalf of the defense on approximately 12 occasions when an offender was, in [her] opinion, rehabilitated." (*See* Weitzl Direct ¶ 4.) There is nothing in the record, therefore, to support Lake's allegation of bias.

33. Lake further criticizes Dr. Weitzl's opinion because, allegedly, during cross-examination, "Dr. Weitzl summarized her entire risk assessment of Mr. Rice with the matter-of-fact and shocking mantra: 'Once a pedophile, always a pedophile.'" (Lake's Proposed Findings ¶ 47). In point of fact, it was Lake's attorney, Mr. Jacobs, and not Dr. Weitzl, who raised this purported "mantra." (*See* Hearing Tr. (Weitzl) at 632:15-16.) As the record reflects, when asked

by Mr. Jacobs whether it was her belief that “once a pedophile, always a pedophile” (*see id.*), Dr. Weitzl explained: “It’s not my belief, it’s the description [of pedophilia] in the DSM [Diagnostic Statistical Manual] and by experts in the field.” (*See* Hearing Tr. (Weitzl) at 632:9-19).

B. Lake’s Criticisms of Ms. Gremminger’s Expert Opinion are Similarly Baseless

34. In its Proposed Findings, Lake suggests that Ms. Gremminger’s expert opinion should be disregarded because she “is not a law enforcement officer, does not qualify as a risk assessment expert, and has lost all credibility because of her role in the witness intimidation canard against Mr. Rice.” (Lake’s Proposed Findings ¶¶ 27-35.) Setting aside for the moment that the record plainly establishes that, despite similar challenges made during the hearing, the Presiding Judge already concluded that Ms. Gremminger’s testimony “is clearly relevant, given her experience as a sex offender specialist at the Missouri Department of Corrections,” (Order, FCC 17M-29 (ALJ rel. Aug. 15, 2017) at 3), each of these claims is unfounded.

35. First, Lake apparently disputes that Ms. Gremminger is considered part of “law enforcement” because she works in the “probation and parole area.” (Lake’s Proposed Findings ¶ 27.) In doing so, Lake ignores the evidentiary record establishing that Ms. Gremminger attended the local police academy (*see* Hearing Tr. (Gremminger) at 455:1-14), has worked for local law enforcement for the past 25 years (*see* Hearing Tr. (Gremminger) at 448:20-449:2), and that her official duties include supervising the reentry of sex offenders after incarceration into the community. (*See* Hearing Tr. (Gremminger) at 452:16-453:10.) In contrast, Lake fails to adduce any evidence that those who work in probation and parole are not considered “law enforcement.”

36. Second, Lake challenges Ms. Gremminger’s risk assessment on the grounds that she did not examine Rice and because her opinion is based solely on a review of “old” files from the Missouri Department of Corrections. (*See* Lake’s Proposed Findings ¶ 27.) Ms. Gremminger

was not required to conduct a personal interview of Mr. Rice herself in order to render her expert assessment viable. Rule 703 of the Federal Rules of Evidence specifically states that “[a]n expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed (*emphasis added*).”² Ms. Gremminger’s evaluation was fully compliant with the dictates of Fed. R. Evid. 703.

37. In addition, as the record reflects, Ms. Gremminger’s opinion was not solely based on a review of “old” files. In addition to reviewing files from the Missouri Department of Corrections, Ms. Gremminger also reviewed Dr. Duncan-Hively’s risk assessment report dated November 22, 2014, and current information that Rice had provided to the Missouri Sex Offender Registry in fulfillment of his sex offender registration responsibilities. (*See* Gremminger Direct at ¶¶ 15, 16; Hearing Tr. (Gremminger) at 503:22-504:3.) Specifically, Ms. Gremminger based her opinion on current information from Dr. Duncan-Hively’s 2014 report indicating that Rice still drinks (*see* Hearing Tr. (Gremminger) at 524:1-526:7) and on information from the current Missouri sex offender registry which indicates that Rice owns the same type of sports car that he had when he was convicted. (*See* Hearing Tr. (Gremminger) at 518:8-519:9; *see also* EB Direct Case Exh. 4 at 12.) Ms. Gremminger also based her opinion on her own scoring of one of the actuarial tests used to assess risk of reoffence. (*See* Gremminger Direct ¶ 16.)

38. Third, Lake again challenges Ms. Gremminger’s credibility because, at some point earlier in the case, Ms. Gremminger was told not to communicate with the FCC after some unidentified third-party complained to the Missouri Department of Corrections about her

² Fed. R. Evid. 703.

involvement in the case and the Bureau was led to believe someone had threatened Ms.

Gremminger if she continued to work with the FCC. (*See* Hearing Tr. (Gremminger) at 489: 12-490:2; *see also* Lake's Proposed Findings ¶¶ 28-35.) Without citing to any evidence in support of its allegation, Lake accuses Ms. Gremminger of having some role "in advancing this mischief." (Lake's Proposed Findings ¶ 35.)

39. Despite Lake's rhetoric concerning the various procedural motions filed, it fails to make any connection between the events at issue and Ms. Gremminger. Moreover, the Presiding Judge already ruled that "there is no evidence to suggest that [Ms.] Gremminger acted in bad faith and . . . has already made clear that he does not hold the incident against Mr. Rice or Lake." (*Order*, FCC 17M-29, at 2.)

REPLY PROPOSED CONCLUSIONS OF LAW

I. The Preponderance of The Evidence Standard Applies in This Proceeding

40. Lake raises the "concern" that the addition of footnote 60 to the Hearing Designation Order may impose a standard of "extraordinary and compelling circumstances" for the grant of the license at issue. (*See* Lake's Proposed Findings ¶ 51; *see also* EB Official Notice Exhibit No. 2, at n.60.) The Presiding Judge has already decided that issue, reaffirming that the preponderance of the evidence standard applies in this proceeding. (*See Order*, FCC 15M-8 (ALJ, rel. Mar. 4, 2015).)

II. The Six Letters of Reference That Lake Relies on are Inadmissible Hearsay and Have no Probative Value

41. As set forth above, the six letters of reference offered by Lake in support of Rice's character and his standing in the community were apparently generated by "acquaintances and business associates of Mr. Rice" who do not live within Rice's community and do not appear to

have any intimate knowledge of Rice's sexual orientation or patterns of offensive behavior against children. (*See* Lake Direct Case Exh. 1, App. C.) As the Bureau's expert psychologist Dr. Weitzl stated, reference letters from acquaintances and business associates are not helpful in assessing a sex offender's character because "unless they have seen [someone] molest a child," they will not be able to relay pertinent information about the risk the offender poses. (Hearing Tr. (Weitzl) at 673:22-674:8.) Thus, these letters are not probative of Rice's propensity to commit sex crimes against children.

42. Moreover, as the Bureau explained in its Proposed Findings, these six letters of reference are being offered by Lake for the very purpose of proving the truth of the matter therein asserted, i.e., that "Mr. Rice is honest, is respected in the community, is a changed man, has achieved extraordinary rehabilitation and good standing in [the community], and fully complies with all FCC and FAA regulations in the current maintenance and operation of his communications towers." (Lake Direct Case Exh. 1, App. C.) However, none of the authors of these letters testified at the hearing and, consequently were not available for cross-examination at that time. As such, these letters are hearsay.³ As Lake has not presented any hearsay exception that applies to these letters, they are inadmissible and should not be afforded any evidentiary weight.

III. Statements From Lake's Medical Expert, Dr. Stillings, Are Inadmissible Hearsay

43. In its Proposed Findings, Lake relied on two statements from Rice's psychiatrist, Dr. Wayne A. Stillings, to establish that Rice has been "successfully treated" and has shown

³ *See* Fed. R. Evid. 801(c) ("Hearsay" is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."); "see also 47 C.F.R. § 1.351 ("Except as otherwise provided in this subpart, the rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States shall govern formal hearings.").

“genuine remorse for his wrongdoing.” (Lake’s Proposed Findings ¶ 11; *see also* EB Official Notice Exh. 1 at 13-22.) It is apparent that, like the six reference letters from Rice’s acquaintances and business associates discussed above, Lake is relying on Dr. Stillings’ statements for the very purpose of proving the truth of the matters asserted in those statements. However, as the Presiding Judge recognized during the hearing, Dr. Stillings died in 2015 and, therefore, did not offer direct testimony and was not available for cross examination during the hearing. (*See* Hearing Tr. at 171:8-18.) Thus, like the six reference letters, Dr. Stillings’ statements are hearsay.⁴ Here again, Lake has not offered any basis for why a hearsay exception should apply. Accordingly, Dr. Stillings’ 2001 and 2011 statements should be deemed inadmissible and should not be afforded any probative value.

IV. Lake’s Appeal of the Presiding Judge’s Admission of Missouri Department of Parole and Probations Records Into Evidence Is Baseless

44. In its Proposed Findings –and specifically in its Proposed Conclusions of Law section – Lake argues that the Presiding Judge should reverse his ruling admitting into evidence the Bureau’s Direct Case Exhibit 4 which contains various Missouri Department of Parole and Probations records concerning Rice. (*See* Lake’s Proposed Findings ¶¶ 45-48.) Specifically, Lake challenges the admission of “a number of 20-or-more-year-old untested written reports . . . concerning alleged sexual misconduct by Mr. Rice prior to his incarceration.” (Lake’s Proposed Findings ¶ 45.) As the Bureau established at the hearing, these records contain the historical documents and records describing, among other things, the police investigation records, parole board records, court records and victims’ statements relating to Rice’s criminal offenses that

⁴ *See* Fed. R. Evid. 801(c).

were maintained by the Missouri Department of Parole and Probations in the ordinary course of business. (*See* EB Direct Case Exhibits 4 and 5; *see also* Hearing Tr. 256:6-257:14.) As such, the Presiding Judge admitted these documents into evidence. (*See* Hearing Tr. at 256:23-257:16.)

45. The Presiding Judge later ruled that these documents “readily meet the standard FRE 803(8) (public records or reports, including observations and evaluations), as well as FRE 803(6) (business records kept in the course of regularly conducted activities)” and that these “public documents prepared in discharge of governmental functions, including such documents containing fact, opinion, and/or conclusion, are considered trustworthy unless shown otherwise, which Lake has not done.” (*Order*, FCC 17M-29 (ALJ, rel. Aug. 15, 2017), at 3.) And again, in the context of deciding Lake’s motion to disqualify the Presiding Judge, the Presiding Judge acknowledged that these documents are admissible under the Federal Rules of Evidence. (*See Memorandum Opinion and Order*, 17M-31 (ALJ, rel. Aug. 28, 2017), at 4-5.)

46. In that same *Memorandum Opinion and Order*, the Presiding Judge also dismissed the argument that Lake again makes in its Proposed Findings – *i.e.*, that the Bureau’s submission of these documents constitutes relitigation of Rice’s crimes. (*See* Lake’s Proposed Findings ¶ 45; *see also, id.* ¶¶ 42-44.) The Presiding Judge specifically rejected this argument, stating that it “was necessary to review Rice’s criminal history in order to evaluate and assess his rehabilitation therefrom. . .” (*See Memorandum Opinion and Order*, 17M-31, at 4-5.)

47. As Lake offers no new authority or rationale for the Presiding Judge to reverse his earlier rulings, the Presiding Judge should reject Lake’s argument and this Proposed Conclusion of Law.

V. Rice's Crimes Are Not "Nonviolent"

48. In an apparent effort to minimize the impact of Rice's sexual behavior for which he was convicted, Lake characterizes Rice's crimes as "nonviolent sexual offenses." (Lake's Proposed Findings ¶ 11.) Lake offers no support for this characterization.

49. The evidentiary record demonstrates the violent nature of Rice's behavior. Specifically, documents from the Missouri Department of Corrections reflect that Rice was convicted for sex crimes against five minor males, some of whom were less than 14 years old. (See EB Direct Case Exh. 10 at 2-10.) These files also show that two of the victims were unconscious when Rice molested them. (See EB Direct Case Exh. 4 at 12-13.) Rice trapped another victim in a building housing a radio station transmitter controlled by Rice and forced him to submit to Rice's sexual assault. (See EB Direct Case Exh. 4 at 12-13; *see also* Gremminger Direct at ¶ 16.) Moreover, the Bureau's expert, Dr. Weitzl, testified that Rice's convictions for sodomy are considered crimes of violence. (See Hearing Tr. (Weitzl) at 655:22-626:7.)⁵

50. For these reasons, Lake's characterization of Rice's crimes as "nonviolent" should be rejected. Moreover, this attempt to downplay the seriousness of Rice's crimes is further indication of Rice's continued refusal to take responsibility for his past behavior, his lack of empathy for his victims, and his inability to perceive the harm he has caused his victims.

VI. Lake's Qualifications to Be a Commission Licensee Are Intertwined With Those of Rice

51. In the Proposed Findings, Lake appears to suggest that its qualifications to regain its status as a Commission licensee can – and should – be adjudged separate and apart from its

⁵ See also Crime Victims' Rights, <http://www.missourikidsfirst.org/MCAC/wp-content/uploads/2010/05/crime-victims-right-of-Missouri.pdf> at 2 (last visited June 7, 2018).

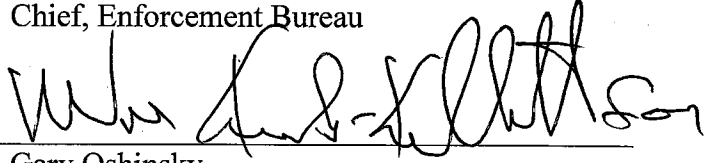
“President, Secretary, sole director, and 100% stockholder [] Michael S. Rice.” (Lake’s Proposed Findings ¶ 38.) However, the reasons Lake’s licenses were previously revoked are inextricably tied to the criminal sex offenses of their President, Secretary, sole director, and 100% stockholder, Michael S. Rice. *See, e.g., Contemporary Media, Inc.*, 13 FCC Rcd 14437, 14446, ¶ 16 (1998) (“Rice’s convictions involving the repeated sexual abuse of children adversely affect [Lake’s and other Rice companies’] qualifications to remain Commission licensees.”) In fact, it is Lake’s misrepresentations regarding Rice’s involvement, control and ownership of his radio stations that caused it to lose its licenses in the first instance. *Id.* at 14460, ¶ 43. Accordingly, the only way in which Lake can demonstrate that it is qualified to hold a Commission license is to demonstrate either that Rice has been rehabilitated and will no longer engage in the sexual behavior for which he was convicted and for which he originally lost his Commission licenses or that Rice is no longer associated with the company. Lake has failed to meet either burden. As such, its application for a new broadcast license should be denied.

CONCLUSION

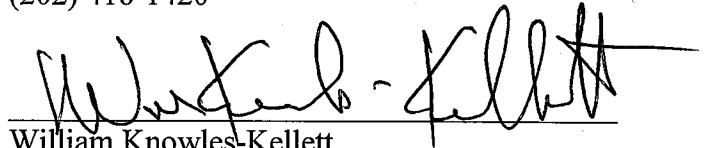
52. Based on the foregoing Reply Proposed Findings of Fact and Conclusions of Law, and those raised in the Bureau’s earlier-filed Proposed Findings of Fact and Conclusions of Law, the Bureau respectfully requests that the Presiding Judge find that Lake has failed to prove, by a preponderance of the evidence, that (i) Lake/Rice will be truthful in their dealings with the Commission; and (ii) Rice has been sufficiently rehabilitated from the disqualifying acts for which he was convicted and for which his prior Commission licenses were revoked such that he now has the qualifications to be a Commission licensee. Accordingly, the Bureau respectfully requests that the Presiding Judge find that both Lake Broadcasting Inc. and Michael S. Rice lack the qualifications to be Commission licensees.

Respectfully submitted,

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June 11, 2018

CERTIFICATE OF SERVICE

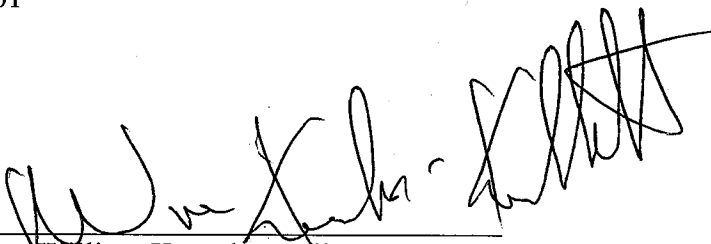
William Knowles-Kellett, an attorney in the Enforcement Bureau's Investigations & Hearings Division, certifies that he has on this 11th day of June, 2018, sent by first class United States mail and by email copies of the foregoing ENFORCEMENT BUREAU'S REPLY PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW to:

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And caused a copy of the foregoing to be served via hand-delivery to:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
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William Knowles-Kellett